IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3011 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TOPLINE SHOES LIMITED

Versus

RESERVE BANK OF INDIA 3RD SPECIAL LAND ACQUISITION

Appearance:

1. Special Civil Application No. 3011 of 2000

PARTY-IN-PERSON for Petitioner No. 1

MR HV CHHATRAPATI for Respondent No. 1

MR SS PANESAR for Respondents No. 2-3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 23/10/2001

ORAL JUDGEMENT

This petition under Article 226 of the Constitution of India is filed by Shri H.M.G.Murthy,

claiming to be the Managing Director of a Company, namely, "Topline Shoes Limited", for appropriate writ, order or direction directing the respondent no.1-Reserve Bank of India, to cause the registration of a criminal complaint against the Corporation Bank and the Canara Bank, respondents nos.2 and 3 respectively as per the provisions contained in Sec.46 of the Banking Regulation Act, 1949 (hereinafter referred to as 'the Act' for short) in the Court of the Chief Judicial Magistrate, at Baroda on account of the offences committed by the said Banks under the Act. It is also prayed to issue further orders to the respondent no.1-Reserve Bank of India to include and mention the name of the petitioner as informant in the complaint to the Court for the purposes of Sec.48 of the said Act and to direct the trial Court to allow the petitioner to present evidence against the accused Banks. It is also prayed for issuance of appropriate order to the trial Court to bring a suitable sympathetic order under Sec.48 of the said Act while giving the final order and judgment in the complaint. Alternatively, the petitioner has prayed that if the respondent no.1-Bank is allowed by this Court to conduct appropriate proceedings under Sec.47A of the Act, they be ordered to complete the process within a period of three months and be further ordered to allow the use of the fine amounts, if any, by the petitioner in its business on appropriate banking terms for a suitable period. The aforesaid reliefs have been prayed for against the Banks on the allegation that they failed to observe the Reserve Bank of India's directives.

2. It appears that, initially, the petition was filed only against the respondent no.1-Reserve Bank of India. However, the respondents nos.2 and 3, i.e. the Corporation Bank and the Canara Bank, came to be joined as party respondents in this petition subsequently as per the order dated 26th April 2001 passed by this Court in Civil Application No.2943 of 2000. Two more Applications being Civil Applications Nos.5910 and 5911 of 2000 have been filed. In Civil Application No.5910 of 2000, it has been prayed that the petitioner may be permitted to plead and rely upon on the statements/submissions/facts contained/mentioned in that Civil Application when the matter contained in Special Civil Application No.3011 of 2000 is taken up for hearing. In the other Civil Application No.5911 of 2000, it has been prayed that this Court may call for the details collected by the Department of Banking Supervision (DBS) and peruse the same before any order is made in the petition. It is also prayed that copies of explanations submitted by Respondents nos.2 and 3 to the DBS be supplied to the

petitioner. Lastly it is prayed that the directive of this Court be directed to be implemented through the DBS of respondent no.1.

3. During the course of hearing of the main petition, learned Counsel Mr.Panesar appearing for the respondents nos.2 and 3 raised a preliminary objection regarding the locus-standi of Mr.Murthy to appear for the petitioner Company. It is the contention of the learned Counsel that Mr.Mruthy has not filed the petition in his personal capacity but in the name of the Company. He has submitted that petitioner Company being a separate legal entity, no Director or Managing Director is entitled to argue out the case in any Court on behalf of the Company. He has also drawn my attention to the following decisions:

(1) Gujarat Maritime Board v. Patel Gandu Paba reported in 1998 (3) GLR 2401.

(2) A.S.Patel v. National Rayon Corpn., reported in AIR 1955 Bom.262.

(3) Samdukhan v. Madanlal, reported in AIR 1959 Raj.35.

(4) in Re - Eastern Tavoy Minerals Corpn., reported in AIR 1934 Cal.563.

(5) Yhayarammal v. Kuppuswami Naidu, reported in AIR 1937 Madras 937.

4. Mr.Murthy, on the other hand, while distinguishing the aforesaid decisions, submitted that none of the Courts has followed Order 29 of the Code of Civil Procedure which provides for subscription and verification of pleading. Reading the said provision, it is submitted that in a suit by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case. It was submitted by Mr.Murthy that, he being the Managing Director of the petitioner Company, is entitled to plead for the Company, in the capacity as party in person and that such right is not questioned in any of the aforesaid decisions. Mr.Murthy further submitted that being a Company, a person is entitled to represent the case under Sec.3(42) of the General Clauses Act and therefore, the Mr.Murthy in the capacity as party in person is entitled to plead the case of the petitioner Company.

5. Since the preliminary objection has been raised on behalf of the respondents nos.2 and 3 regarding the locus-standi of Mr.Murthy to represent the petitioner, I have to deal with the said contention before I hear the matter on merits.

6. It is not in dispute that Mr.Murthy does not hold the Power of Attorney of the petitioner Company. Even if he has it, the same has not been placed on record. It is also not in dispute that the Mr.Murthy has not produced any resolution which has been filed by the Company authorising him to file the petition. The cause title of the petition reveals as "Topline Shoes Ltd., a Limited Company, having its registered office at 229, Jambusar Road, Dabasa, Taluka Padra, Dist. Baroda, Gujarat State, represented by their Managing Director Shri H.M.G.Murthy residing at 4, Parijat Society, Diwalipura, Baroda 390 015". After the prayer clause, below the line, "Drawn and filed by", Mr.Murthy has signed for the petitioner. The petition is also affirmed by Mr.H.M.G.Murthy as the Managing Director of the petitioner Company.

7. The question, therefore, arises as to whether Mr.Murthy, in his personal capacity, as party in person, can appear and conduct the proceedings for and on behalf of the Company and can have the right of audience of the Court or not as per Order 3 Rule 1 of the Code of Civil Procedure? The said provision provides that, appearances, etc., may be in person, by recognised agent or by pleader. From reading Order 3 Rule 1, it is clear that the appearance can be made by a recognised agent or a pleader. From reading Rule 2(a), it is clear that a person holding powers-of-attorney, authorising them to make and do such appearances, applications, and acts on behalf of such parties, is the recognised agent of parties. It is necessary at this stage to consider the provisions of Sec.33 of the Advocates Act which permit Advocates alone to practice. Exception to the said provision is contained in Sec.32 which empowers the Court to permit in a particular case to a person who is non-Advocate. Sec. 29 of the Advocates Act says that, subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons is entitled to practise the profession of law, namely, Advocates. From reading the aforesaid provision, it is clear that as per Order 3 Rule 1 of the Code of Civil Procedure, appearance can be made either by a recognised agent or a pleader and on reading the provisions of the Advocates Act, Advocates are entitled to practise. However, the Court may permit any

person not enrolled as an Advocate under this Act to appear before it.

In the Bombay case of A.S.Patel (supra), the Bombay High Court was required to consider the expression, "appearance" and it is held that it does not include pleading. Right of audience in the Court, right to examine and cross-examine witnesses are all parts of pleading with which Order 3 does not deal at all. It deals with restricted class of acts in connection with the litigation in Court and it is with regard to that restricted class of act that Order 3 permits recognised agents to be appointed. Similar view has been taken by the Rajasthan High Court in the case of Samdukhan v. Madanlal (supra). The said case was followed by this Court in the case of Gujarat Maritime Board v. Patel Gandu Paba (supra). In the said decision, Mr.S.P.Gusain, Dy. Collector & Senior Legal Advisor of G.M.B. filed appearance in the suit being Civil Suit No.85 of 1997 after duly authorised by the Vice-Chairman and Chief Executive Officer, G.M.B., who is holding the Power of Attorney. The appearance of Mr.Gusain was objected to on the ground that Mr.Gusain was neither holding any power of attorney nor he is holding any Sanad from Gujarat Bar Council or from any other State and hence, he has no right to plead on behalf of the G.M.B. This Court upheld the said contention considering the above facts and held that Mr.Gusain has no locus-standi to plead on behalf of defendant no.1-G.M.B. The question arose before the Court for consideration was, "whether a non-lawyer like Mr.S.P.Gusain should be permitted to continue or argue in routine, on behalf of his employer like G.M.B. under the guise of seeking permission in individual cases. Considering the facts of the case, this Court held that the way the G.M.B. has been authorising Mr.Gusain to appear in the cases and the list of cases which clearly shows that it is not the case where Mr.Gusain has been appearing in certain selected cases, but it is a matter of routine, and therefore, in fact he is practising the profession in the guise of memorandum of authorisation. Under the circumstances, this Court held that Mr.Gusain cannot be permitted to appear.

In Re - Eastern Tavoy Minerals Corpn. (supra) the Supreme held that to plead is not to make or do an appearance or an application or an act, and is not within Order 3 Rule 1 and therefore, an agent as such has no right of audience. It was a case where the right of audience was claimed on behalf of the Company by one of the Directors of the Company, who held the power of attorney, authorising him "to appear for and on behalf of

the company, to conduct and represent the company in the proceedings, etc." The Court held that he had no right of audience.

The Full Bench of the Madras High Court in the case of Thayarammal (supra) also ruled that an agent with a power of attorney to appear and conduct judicial proceedings, but who has not been so authorised by the High Court, has no right of audience on behalf of the principal either in the appellate or original side of the High Court.

8. In view of the settled position of law as above, I am of the view that Mr.H.M.G.Murthy on behalf of the petitioner Company, who is neither having any power of attorney on behalf of the Company nor authorised by any resolution of the Company, has no right of audience even though he may be the Managing Director of the Company.

9. The party in person as well as the learned Counsel for the respondents Banks submitted that in various proceedings initiated by the petitioner Company before Courts and Forums, namely, the Debt Recovery Tribunal, Consumer Disputes Redressal Forum, High Court and Supreme Courts etc., Mr.H.M.G.Muthy has been habitually appearing. It is not the case where Mr.Murthy has been appearing only in certain selected cases, but it is a rather routine course adopted by him. Therefore, the ratio laid down by this Court in the case of Gujarat Maritime Board v. Patel Gandu Paba (supra) is clearly applicable looking to the facts of the case on hand.

10. The contention of Mr.Murthy that he is entitled to plead the case of the Company as a party in person under the provisions of Order 29 of CPC has no merits as Order 29 merely authorises the Secretary or any director or other principal officer of the Corporation to sign, plead and to verify on behalf of the corporation. As per the settled law, that does not include pleading or right of audience in the Court. Right to examine and cross-examine witnesses are all parts of pleading with which Order 3 does not deal at all. It deals with restricted class of acts in connection with the litigation in Court and it is with regard to that restricted class of act that Order 3 permits recognised agents to be appointed.

11. In view of the aforesaid discussion, I uphold the preliminary objection raised by the learned Counsel for the respondents regarding the locus-standi of Mr.H.M.G.Murthy claiming appearance on behalf of the

petitioner Company.

12. I specifically asked Mr.Murthy as to whether he would like to get the services of an Advocate to represent the case of the petitioner Company, but he has declined to engage the services of an Advocate. Under the circumstances, I have no other alternative but to go in to the merits of the case.

13. After having heard the learned Counsel, gone through the averments and pleadings made in the petition and the reply filed on behalf of the respondents, I am of the opinion that there are highly disputed questions of facts in the petition and therefore, it is impossible for this Court to go into the same under Article 226 of the Constitution of India and to grant the reliefs as prayed for in the petition. Even assuming that the Banks committed the breach of certain resolutions issued by the Reserve Bank of India, that by itself cannot and would not be the grounds for directing the Reserve Bank of India to launch prosecution against the erring respondent-Banks. The manner in which the reliefs are prayed for, namely, to initiate criminal proceedings against the respondents nos.2 and 3 Banks for committing the alleged illegality etc., appear to be an attempt on the part of the petitioner to be a pressurising tactic and the various litigations initiated by the petitioner further go to show that the same are not bonafide litigations. Therefore, even on merits also, I see no reasons to grant any relief to the petitioner as prayed for. I, therefore, see no merits in this petition. The petition is, therefore, rejected. Rule is discharged with no order as to costs.

(K.R. Vyas, J.)

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